FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FAIR HOUSING OF MARIN, a California non-profit corporation,
Plaintiff-Appellee,

v.

JACK COMBS, d.b.a. Waters Edge Apartments,
Defendant-Appellant.

Nos. 00-15925
00-17040

D.C. No.
CV-97-1247-MJJ

OPINION

Appeal from the United States District Court for the Northern District of California Martin J. Jenkins, District Judge, Presiding

Argued and Submitted
October 19, 2001 – San Francisco, California

Filed April 9, 2002

Before: Paul H. Roney*, Procter Hug, Jr. and Sidney R. Thomas, Circuit Judges.

Opinion by Judge Roney

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* The Honorable Paul H. Roney, Senior Circuit Judge for the Eleventh Circuit, sitting by designation.

COUNSEL

Michael K. Johnson, Lewis, D'Amato, Brisbois & Bisgaard LLP, San Francisco, California, attorneys for the defendant-appellant.

Thomas V. Loran III, Kim Zeldin, San Francisco, California, attorneys for the plaintiff-appellee.

OPINION

RONEY, Circuit Judge:

Plaintiff Fair Housing of Marin ("Fair Housing") brought action for illegal housing discrimination on the basis of race against Jack Combs, owner of the Waters Edge apartment complex in San Rafael, California. Fair Housing alleged that Combs violated the Fair Housing Act of 1968 (42 U.S.C. § 3604), the Civil Rights Act of 1866 (42 U.S.C. § 1982), the California Fair Employment and Housing Act (CAL. GOV'T CODE § 12955), and the California Unfair Business Practices Act (CAL. BUS. & PROF. CODE § 17200, *et seq.*). In his answer Combs claimed, *inter alia*, that Fair Housing lacked standing to sue. The district court (N.D.Cal., Jenkins, J.) found that Fair Housing had standing and later sanctioned Combs for discovery abuses by striking his answer and entering default judgment against him prior to trial. The district court awarded the plaintiff compensatory damages of $24,377 and punitive damages of $74,400, and adopted the magistrate judge's recommendation, made after a full hearing, of attorney's fees and costs in the amount of $508,606.78.

Combs appeals, claiming that the district court erred in the following ways: 1) finding that Fair Housing had

standing to sue; 2) imposing sanction against Combs with default judgment and damages; and 3) awarding attorney's fees of $508,606.78. We affirm.

Fair Housing of Marin is a non-profit community organization in San Rafael, California. Among its many activities to further its mission of promoting equal housing opportunities, Fair Housing investigates allegations of discrimination, conducts tests of housing facilities to determine whether equal opportunity in housing is provided, takes such steps as it deems necessary to assure equal opportunity in housing and to counteract and eliminate unlawful discriminatory housing practices, and provides outreach and education to the community regarding fair housing.

Jack Combs owned and managed the Waters Edge apartment complex which had eighteen (18) rental units. Fair Housing received complaints that Combs was racially discriminating against black tenants and black potential tenants. In response, Fair Housing conducted two sets of controlled tests where a black tester was shown a unit at Waters Edge followed by a white tester. The tests indicated that Combs discriminated against black applicants.

I. Whether Fair Housing Has Standing.

We review the district court's decision regarding standing *de novo*. *Harris v. Itzhaki,* 183 F.3d 1043, 1049 (9th Cir. 1999) (citing *San Pedro Hotel Co., Inc. v. City of L.A.,* 159 F.3d 470, 474-75 (9th Cir. 1998); and *Johns v. County of San Diego,* 114 F.3d 874, 876 (9th Cir. 1997)). Whether a community fair housing organization has standing to sue a private party for violations of the Fair

Housing Act is a question of first impression for this circuit.

Fair Housing claims first-party standing as an organization on the grounds of diversion of resources and frustration of mission.

The Supreme Court set out the standard for organizational first-party standing in *Havens Realty Corp. v. Coleman,* 455 U.S. 363 (1982), holding that Congress intended standing under the Fair Housing Act to extend to the full limits of Article III. In *Havens*, a fair housing organization called Housing Opportunities Made Equal (HOME) and two of its employed testers brought an action against Havens Realty, the owner of an apartment complex. The plaintiffs alleged that Havens Realty engaged in racial steering in violation of § 3604(d) of the Fair Housing Act. Racial steering is the "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups." *Havens,* 455 U.S. at 367 n.1. (citation omitted).

The Court found that HOME suffered an injury sufficient to confer standing. *Id.* at 379. HOME devoted significant resources to identifying and counteracting Havens Realty's discriminatory steering practices, and this diversion of resources frustrated the organization's counseling and referral services. The Court concluded that "[s]uch concrete and demonstrable injury to the organization's activities – with the consequent drain on the organization's resources – constitutes far more than simply a

setback to the organization's abstract social interests." *Id.* at 379 (citing *Sierra Club v. Morton,* 405 U.S. 727, 739 (1972)).

Combs cites three cases to support his claim that Fair Housing lacks standing, but these cases are distinguished from the one at bar, and the law of those circuits is not different from the law we apply here.

(1) *Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers,* 141 F.3d 71 (3d Cir. 1998), an action against a newspaper alleging that the newspaper had published discriminatory advertisements, simply held that plaintiff Fair Housing Council failed to meet its burden of proving a causal link between the alleged wrongdoing and the injury and failed to substantiate any perceptible impairment to its mission. *Montgomery Newspapers,* 141 F.3d at 76-77. In a later case, the Third Circuit in *Alexander v. Riga,* 208 F.3d 419 (3d Cir. 2000), held that plaintiff Fair Housing of Pittsburgh, a fair housing organization, had standing because it "diverted resources to investigate and to counter [the defendants' discriminatory] conduct." *Alexander,* 208 F.3d at 427 n.4.

(2) In *Fair Employment Council of Greater Wash., Inc. v. BMC Mktg. Corp.,* 28 F.3d 1268 (D.C.Cir. 1994), a fair employment case, the D.C. Circuit rejected the argument that the "mere expense of testing" constitutes injury in fact fairly traceable to the discriminatory conduct. *BMC Marketing,* 28 F.3d at 1276. The fair housing law for the D.C. Circuit concerning standing had been established by *Spann v. Colonial Vill., Inc.,* 899 F.2d 24 (D.C. Cir. 1990), where then-Circuit Judge Ruth Bader Ginsburg held that

> [a]n organization cannot, of course, manufacture the injury necessary to maintain a suit from its

> expenditure of resources on that very suit. . . . Havens makes clear, however, that an organization establishes Article III injury if it alleges that purportedly illegal action increases the resources the group must devote to programs independent of its suit challenging the action. See *Havens*, 455 U.S. at 379. . . . Plaintiffs crucially alleged that these [discriminatory] advertising practices "interfered with plaintiff [Fair Housing Council] and [Metropolitan Washington Planning & Housing Association's] efforts and programs intended to bring about equality of opportunity for minorities and others in housing" and required plaintiffs "to devote scarce resources to identify and counteract defendants' advertising practices" (citations omitted). . . . The organizations instead allege concrete drains on their time and resources. Expenditures to reach out to potential home buyers or renters who are steered away from housing opportunities by discriminatory advertising, or to monitor and to counteract on an ongoing basis public impressions created by defendants' use of print media, are sufficiently tangible to satisfy Article III's injury-in-fact requirement.

Id. at 27-29 (citations omitted).

(3) In *Ass'n for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Health Retardation Ctr. Bd. of Trs.*, 19 F.3d 241 (5th Cir. 1994), the Fifth Circuit held that

> [t]he mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization. [Plaintiff's] argument

> implies that any sincere plaintiff could bootstrap standing by expending its resources in response to actions of another.

Ass'n for Retarded Citizens, 19 F.3d at 244. Since that case was decided, the Fifth Circuit has held that "an organization could have standing if it had proven a drain on its resources resulting from counteracting the effects of the defendant's actions." *La. ACORN Fair Hous. v. LeBlanc,* 211 F.3d 298, 305 (5th Cir. 2000).

Five other circuits which have addressed the question of organizational first-party standing in a fair housing context have held that the type of injuries alleged by Fair Housing satisfy standing requirements. *See Ragin v. Harry Macklowe Real Estate Co.,* 6 F.3d 898 (2d Cir. 1993) (fair housing organization had standing to sue real estate company for placing newspaper advertisements depicting white people only because the fair housing organization was forced to devote significant resources to identify and counteract the defendants' advertising practices and did so to the detriment of their efforts to obtain equal access to housing through counseling and other services); *Hooker v. Weathers,* 990 F.2d 913 (6th Cir. 1993) (fair housing organization established standing by devoting resources to investigating and confirming defendant's discriminatory practices); *Vill. of Bellwood v. Dwivedi,* 895 F.2d 1521 (7th Cir. 1990) (holding that fair housing organization had standing to sue real estate brokerage for violations of Fair Housing Act. "[T]he only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination."); *Ark. ACORN Fair Hous., Inc. v. Greystone Dev., Ltd. Co.,* 160 F.3d 433 (8th Cir. 1998) (acknowledging that "the deflection of an

organization's monetary and human resources from counseling or educational programs to legal efforts aimed at combating discrimination, such as monitoring and investigation, is itself sufficient to constitute an actual injury [where] traceable to some act of the defendant" (citations omitted) but finding that plaintiff did not show specific facts establishing distinct and palpable injuries fairly traceable to defendant's advertisements); and *Cent. Ala. Fair Hous. Ctr., Inc. v. Lowder Realty Co., Inc.*, 236 F.3d 629 (11th Cir. 2000) (fair housing organization has standing to recover in its own right for the diversion of its resources to combat the defendant's discrimination).

In this Circuit, an analogous case is *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review,* 959 F.2d 742 (9th Cir. 1991). In *El Rescate*, individuals and a legal services organization, El Rescate, brought a class action against the Executive Office of Immigration Review, challenging its policy for failure to provide full translation of deportation and exclusion hearings. This Court, applying *Havens,* held that "[t]he allegation that the EOIR's policy frustrates these goals [of helping refugees obtain asylum and withhold deportation] and requires the organizations to expend resources in representing clients they otherwise would spend in other ways is enough to establish standing." *Id.* at 748 (citing *Havens,* 455 U.S. at 379).

Following the lead of the other circuits which have upheld organizational standing for fair housing groups, it is not necessary here to conflict with those cases which suggest that litigation expenses alone do not establish standing.

Plaintiff Fair Housing of Marin responded to citizen complaints against Combs, and alleged injury beyond litigation expenses. The district court stated that

> one of [Fair Housing's] activities in combating illegal housing discrimination is to provide "outreach and education to the community regarding fair housing." Complaint, ¶ 5. [Fair Housing] alleges that, as a result of defendant's discriminatory practices, it has "suffered injury to its ability to carry out its purposes . . . [and] economic losses in staff pay, in funds expended in support of volunteer services, and in the inability to undertake other efforts to end unlawful housing practices." *Id.* Thus, fairly construed, [Fair Housing] complains that defendant's discrimination against African Americans has caused it to suffer injury to its ability to provide outreach and education (i.e., counseling).

The record supports the district court's finding that Fair Housing's resources were diverted to investigating and other efforts to counteract Combs' discrimination above and beyond litigation. Fair Housing itemized its claim of $16,317 for diversion of resources, and the district court granted $14,217. With respect to frustration of mission, the district court found that Fair Housing suffered $10,160 in frustration of mission damages, namely for design, printing, and dissemination of literature aimed at redressing the impact Combs' discrimination had on the Marin housing market.

We hold that Fair Housing of Marin has direct standing to sue because it showed a drain on its resources from both a diversion of its resources and frustration of its mission.

II. Whether the District Court Properly Imposed Sanctions and Entered a Default Judgment Against Combs.

The trial court's decision to strike Combs' answer and enter a default judgment based on discovery violations is reviewed for abuse of discretion. *Stars' Desert Inn Hotel & Country Club, Inc. v. Hwang,* 105 F.3d 521, 524 (9th Cir. 1997) (citing *Dahl v. City of Huntington Beach,* 84 F.3d 363, 367 (9th Cir. 1996)).

Pursuant to Federal Rule of Civil Procedure 37(b)(2)(C), a district court has the option of, *inter alia*, "rendering a judgment by default against the disobedient party." FED. R. CIV. P. 37(b)(2)(C). In the Ninth Circuit, sanctions are appropriate only in "extreme circumstances" and where the violation is "due to willfulness, bad faith, or fault of the party." *United States v. Kahaluu Constr. Co., Inc.,* 857 F.2d 600, 603 (9th Cir. 1988) (citations omitted). Disobedient conduct not shown to be outside the litigant's control meets this standard. *Hyde & Drath v. Baker,* 24 F.3d 1162, 1167 (9th Cir. 1994).

The record is clear and undisputed that Combs repeatedly flouted even his basic discovery obligations, often violating court orders. For example, Combs not only failed to produce documents as ordered, but also misrepresented to both counsel and to the district court that the documents did not exist. The documents were in Combs' one-bedroom apartment. The district court found that Combs' actions prejudiced Fair Housing by depriving it of any meaningful opportunity to follow up on the time-sensitive information or to incorporate it into litigation strategy. The district court considered lesser or alternative sanctions and found them inappropriate because Combs continued to violate court orders despite multiple warnings and a finding that monetary sanctions should be imposed.

Combs argues that the sanctions were inappropriately entered against him because he eventually produced the documents. The district court properly considered and rejected this argument, citing this Court's holding in *North Am. Watch Corp. v. Princess Ermine Jewels,* 786 F.2d 1447, 1451 (9th Cir. 1986), where we held that "[b]elated compliance with discovery orders does not preclude the imposition of sanctions. *Nat'l Hockey League v. Metro. Hockey Club, Inc.,* 427 U.S. 639, 643 (1976) (per curiam); *G-K Props. v. Redevelopment Agency of the City of San Jose,* 577 F.2d 645, 647-48 (9th Cir. 1978). Last-minute tender of documents does not cure the prejudice to opponents nor does it restore to other litigants on a crowded docket the opportunity to use the courts. *G-K Properties,* 577 F.2d at 647-48."

The district court's determination to sanction Combs by default was not an abuse of discretion or clear error of judgment.

With respect to the determination of liability and the default judgment itself, the general rule is that well-pled allegations in the complaint regarding liability are deemed true. *Geddes v. United Fin. Group,* 559 F.2d 557, 560 (9th Cir. 1977) (citing *Pope v. United States,* 323 U.S. 1 (1944)). The district court is not required to make detailed findings of fact. *Adriana Int'l Corp. v. Thoeren,* 913 F.2d 1406, 1414 (9th Cir. 1990).

There is ample evidence in the record that Combs violated the Fair Housing Act of 1968, the Civil Rights Act of 1866, the California Fair Employment and Housing Act, and the California Unfair Business Practices Act.

With respect to the amount of the judgment for damages, the district court did not commit clear error

because it made several specific findings of fact with respect to Fair Housing's actual damages. *Simeonoff v. Hiner,* 249 F.3d 883, 892-93 (9th Cir. 2001). The record fully supports the award of $14,217 in compensatory damages for diversion of resources and a total of $10,160 for frustration of mission damages. Fair Housing had requested $16,317 and $34,500, respectively.

III. Whether the District Court Properly Awarded Punitive Damages.

An award of punitive damages is subject to an abuse of discretion standard of review. *Pavon v. Swift Transp. Co.,* 192 F.3d 902, 909 (9th Cir. 1999). *See also EEOC v. Farmer Bros. Co.,* 31 F.3d 891, 903 (9th Cir. 1994).

The Supreme Court has held that punitive damages may be assessed under 42 U.S.C. § 1983 when a defendant's conduct is shown to be motivated by evil motive or intent, or if it involves reckless or callous indifference to the federally protected rights of others. *Smith v. Wade,* 461 U.S. 30, 56 (1983).

Fair Housing requested $200,000 in punitive damages, which it calculated to be one full year of gross revenues from Combs' Waters Edge property. The district court found that Combs acted with at least a reckless disregard for the federally protected rights of blacks who were either tenants or potential tenants and awarded punitive damages of $74,400. It arrived at that figure by relying on the stipulated facts in the record and focusing on Combs' behavior against two black tenants who were replaced by white tenants.

The court found that Combs generated ninety-three (93) months of "all-white" revenue from the two apartment units. The record reflects that Combs offered vacant apartments for $800-$825 per month during the time of his discrimination. The district court took the lower number ($800) and multiplied that by 93 months of Combs' "all-white" revenue for those two apartment units for a punitive damage award of $74,400. The district court made specific calculations when awarding punitive damages and carefully limited them to the present case, specifically noting that although it was "aware that other African-American tenants had previously been tenants at Waters Edge . . . the circumstances of their departures are not part of this record" and that "the punitive damages sum derived from the above calculation is sufficient and reasonable under the circumstances."

Combs does not challenge the methodology of the district court's punitive damages calculation. Rather, he challenges the sufficiency of the evidence. In this Circuit, a challenge to the sufficiency of the evidence to support a punitive damage award must be rejected if the award is supported by substantial evidence. *Lambert v. Ackerley,* 180 F.3d 997, 1012 (9th Cir. 1999) (en banc). We define substantial evidence as "such relevant evidence as reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence." *Landes Const. Co., Inc. v. Royal Bank of Can.,* 833 F.2d 1365, 1371 (9th Cir. 1987) (citing *St. Elizabeth Community Hosp. v. Heckler,* 745 F.2d 587, 592 (9th Cir. 1984)).

Here, the district court did look to the full record before it and found that "the record on liability is damning, and Combs' conduct is punishable on its own merits"

while making sure that the court did not "make [Combs] a vehicle for redressing similar injuries he did not cause."

The full record indicates, among other things, that Combs 1) knew that it was illegal to discriminate on the basis of race; 2) treated Fair Housing's African-American testers less favorably than its white testers; 3) told a tester and other tenants that Combs wanted an all-white building; 4) used offensive and racially derogatory language when telling several tenants that he did not want to rent to African-Americans; 5) and told one tenant that he could use the pretext of bad credit to refuse to rent to African-Americans.

The full record shows that Combs' conduct met at least the reckless or callous indifference standard for punitive damages and is sufficient to satisfy and uphold the district court's punitive damages award.

IV. Whether the District Court Properly Awarded Attorney's Fees and Costs in the Amount of $508,606.78.

This Court must give deference to a district court's determination of reasonable attorney's fees, but the district court has to provide some indication or explanation as to how it arrived at the amount of fees awarded. *Chalmers v. City of L.A.*, 796 F.2d 1205, 1211 (9th Cir. 1986), *amended by* 808 F.2d 1373 (9th Cir. 1987).

Combs argues on appeal that the district court erroneously awarded attorney's fees to Fair Housing because Fair Housing achieved only limited success in its litigation against him. Without regard to the merits of this argument, however, Combs did not make this argument in the district court and it is therefore waived. *Natural Res. Def.*

Council v. Houston, 146 F.3d 1118, 1130-31 (9th Cir. 1998) (citing *Parks Sch. of Bus., Inc. v. Symington,* 51 F.3d 1480, 1487 n.4 (9th Cir. 1995) (holding that failure to raise issue before the district court constitutes a waiver of that issue)).

At first glance the amount of the attorney's fees awarded seems very high. It is more than five times the amount of the compensatory and punitive damage awards combined.

The Supreme Court, however, has rejected the notion that attorney's fees in civil rights cases should be proportionate to the amount of damages a plaintiff recovers. *City of Riverside v. Rivera,* 477 U.S. 561 (1986) (upholding attorney's fees award of $245,456.25 where compensatory and punitive damages were $13,300 from federal claims and $20,050 from state-law claims). *See also Missouri v. Jenkins,* 491 U.S. 274 (1989) (upholding attorney's fees of $4 million in school desegregation case); *Quesada v. Thomason,* 850 F.2d 537 (9th Cir. 1988) ("[t]he district court should not have reduced the attorney's fees simply because the damage award was small"); *Morales v. City of San Rafael,* 96 F.3d 359 (9th Cir. 1996) (vacating district court's award of attorney's fees because it was calculated improperly and too low; district court awarded only $20,000 in attorney's fees even though civil rights plaintiff had won compensatory damages of $17,500 and included "extensive and detailed explanations as to why the lodestar figure of $134,759.75 was a reasonable fee in this case").

The magistrate judge held a hearing with respect to attorney's fees and made careful findings and calculations in making the recommendation, which the district court

adopted in its entirety. With respect to the hourly billing rates, the magistrate judge found "ample evidence," including declarations by expert witnesses, that the hourly billing rates plaintiff's counsel requested were reasonable. The magistrate judge further noted that "[d]efendant's challenge . . . lacks substantial evidentiary support."

With respect to the actual number of hours spent, the magistrate judge began his analysis by noting that the documents submitted by plaintiff's counsel were "detailed, thorough, and apparently reliable." The magistrate judge also stated that plaintiff's counsel "exercised considerable billing judgment. . . . [T]hey reduced the number of hours by a substantial margin in order to adjust for any excessive, redundant, or unnecessary hours." The magistrate judge found that the number of hours plaintiff's counsel claimed were not excessive, given the "consistently high quality" of the plaintiff counsel's work and the circumstances involved. The magistrate judge stated that he

> identified no claims for discrete pretrial events or submissions with respect to which we are confident that the time devoted by counsel for plaintiff was obviously more than could reasonably be justified . . . [w]hen we began our consideration of[attorney's fees] we felt some concern about the number of hours claimed . . . [b]ut those concerns have evaporated as we have more closely examined the papers – and focused on their quality, the research that they evidence, and the detailed and fact specific work that was required to prepare them. While the hours claimed for this work are substantial, we cannot say, when we take all pertinent considerations into account, that the hours are excessive.

Because of this thorough analysis, reviewed under the standard of review required in such cases, Combs has not convinced this Court that the district court abused its discretion or committed clear error by adopting the magistrate judge's recommendations as to attorney's fees and costs.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAIR HOUSING OF MARIN,

Plaintiff,

v.

JACK COMBS,

Defendant. /

No. C97-1247 MJJ

ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

(Filed Mar. 10, 1998)

INTRODUCTION

This is an action for housing discrimination. Plaintiff Fair Housing of Marin ("FHOM") seeks legal, equitable, and declaratory relief from defendant Jack Combs ("defendant"), the owner and operator of an apartment complex, for allegedly discriminating against African Americans based on their race or color in violation of (1) the Fair Housing Act of 1968; (2) the Civil Rights Act of 1866; (3) the California Fair Employment and Housing Act; and (4) the California Business & Professions Code. Pending before the court is defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.[1] The motion requires the Court to decide whether FHOM has standing to assert claims against defendant

[1] Defendant's motion is framed as a Fed. R. Civ. P. 12(b)(1) motion to dismiss. As such, the motion is technically untimely because defendant has already responded to the complaint. However, since the matter of subject matter jurisdiction may be raised at any time pursuant to Fed. R. Civ. P. 12(h)(3), defendant's arguments are properly before the Court. *Augustine v. United States*, 704 F.2d 1074, 1075 n.3 (9th Cir. 1983).

under the Fair Housing Act of 1968 and the Civil Rights Act of 1866. Having considered the papers submitted by the parties and the oral arguments of counsel, the Court DENIES the motion.

BACKGROUND

FHOM is a nonprofit corporation organized under the laws of the State of California. Its purpose is to promote the "equal opportunity in renting, purchasing, financing and advertising of housing and [the] elimination of all forms of illegal housing discrimination." Complaint, ¶ 4. FHOM's activities include "(1) investigating allegations of discrimination; (2) conducting tests of housing facilities to determine whether equal opportunity in housing is provided; (3) taking such steps as it deems necessary to assure such equal opportunity and to counteract and eliminate discriminatory housing practices; and (4) providing outreach and education to the community regarding fair housing." *Id.* Defendant is the owner and operator of Waters Edge Apartments, an 18-unit complex located in San Rafael, California. *Id.*, ¶ 5.

In February 1994, FHOM began receiving complaints from tenants residing at Waters Edge Apartments that defendant was discriminating against African Americans. *Id.*, ¶ 6. FHOM responded to the complaints by conducting an "investigation using fair housing testers." *Id.*, ¶ 8. After concluding that defendant had "engaged in a pattern or practice of discrimination against African Americans on account of their race or color . . . for the purpose or with the effect of excluding African Americans from residing at Waters Edge Apartments," FHOM filed the instant

lawsuit on April 9, 1997. *Id.*, ¶ 19. The complaint alleges the following injuries to FHOM:

> By reason of the defendant's unlawful acts and practices, FHOM has suffered injury to its ability to carry out its purposes and to serve the public in its effort to eliminate housing discrimination, to resolve fair housing disputes, to find and to make available decent rental housing to persons regardless of race or color, and to assure rights to the important social, professional, business, economic, and political benefits of associations that arise from living in a community integrated with African Americans. The defendant's unlawful acts and practices have caused FHOM to suffer economic losses in staff pay, in funds expended in support of volunteer services, and in the inability to undertake other efforts to end unlawful housing practices.

Id., ¶ 20.

Defendant argues that FHOM lacks organizational standing to litigate these claims.

DISCUSSION

The jurisdiction of the federal courts is limited by Article III section 2 of the Constitution to deciding "Cases" and "Controversies." U.S. Const., Art. III, § 2; *Arizonans for Official English v. Arizona*, ___ U.S. ___, 117 S. Ct. 1055, 1067 (1997). Standing to sue is an aspect of the case or controversy requirement. *Id.* It queries whether the plaintiff has "'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Arlington Heights v.*

Metropolitan Housing Development Corp., 429 U.S. 252, 261 (1977) (emphasis omitted) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). At an "irreducible minimum," Article III requires: (1) an injury in fact which is concrete and not conjectural; (2) a causal connection between the injury and defendant's conduct; and (3) a likelihood that the injury will be redressed by a favorable court decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

The party invoking the Court's jurisdiction bears the burden of establishing standing. *Id.* at 561. "Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Id.* Thus, an attack on the pleadings such as the one brought by defendant herein, permits plaintiff to rest on "general factual allegations of injury resulting from the defendant's conduct" because, on a motion to dismiss, the court presumes that "'general allegations embrace those specific facts necessary to support the claim.'" *Id.* (quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990).

In addition to these minimum "constitutional" requirements, the Supreme Court has identified three "prudential principles by which the judiciary seeks to avoid deciding questions of broad social impact where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979). These "prudential considerations" have been described as follows. First,

plaintiff's claim must fall within the "zone of interests" to be protected by the statute or constitutional guarantee in question. *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75 (1982) (quoting *Association of Data Processing Service Orgs. v. Camp*, 397 U.S. 150, 153 (1970)). Second, the claim must be for injury to plaintiff's own legal rights and interests, as opposed to the rights and interests of third parties. *Warth v. Selding*, 422 U.S. 490, 499 (1974). Lastly, the injury must be individualized or confined to a discrete group, meaning that the Court must "refrain[ ] from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge Christian College*, 454 U.S. at 475 (quoting *Warth*, 422 U.S. at 499-500)).

These principles do not apply in all cases, however, as "Congress may, by legislation, expand standing to the full extent permitted by Article III, thus permitting litigation by one 'who otherwise would be barred by prudential standing rules.'" *Gladstone, Realtors*, 441 U.S. at 100 (quoting *Warth*, 422 U.S. at 501). In no event, however, may Congress eliminate the constitutional *minima* of "injury in fact." *Id.* Plaintiff must always establish that he has suffered a "distinct and palpable injury" that is likely to be redressed by a favorable court decision. *Id.*

With this standard in mind, the Court now turns to the issue of FHOM's standing to assert its claims under the Fair Housing Act of 1968 and the Civil Rights Act of 1866.

A. Standing under the Fair Housing Act

The United States Supreme Court has held that an organization dedicated to the promotion of fair housing has standing to litigate fair housing claims in its own right if it alleges that defendant's discriminatory acts caused injury to the organization's activities and a consequent drain on its resources. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). In *Havens*, a fair housing organization ("HOME") brought suit against a realtor and one of its employees for "racial steering" in violation of the Fair Housing Act. *Id.* at 366. The complaint alleged that the defendant's illegal practices had frustrated "its efforts to assist equal access to housing through counseling and other referral services [causing HOME] to devote significant resources to identify and counteract defendant's racial steering practices." *Id.* at 379. Similar to the allegations in this case, the plaintiff organization in *Havens* alleged that it had spent considerable time identifying and counteracting the defendant's unlawful practices by utilizing "testers" to determine whether the defendant was in fact discriminating against African Americans. *Id.* at 368. After recognizing that Congress had intended standing under the Fair Housing Act to extend to the full extent of the Constitution and thus, is not limited by prudential considerations, the Supreme Court concluded that the injuries complained of by HOME were sufficient to confer standing. Specifically, the Supreme Court stated:

> If, as broadly alleged, petitioner's steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income homeseekers, there can be no question that the organization has suffered injury in fact. Such concrete and demonstrable injury to the organization's activities –

> with the consequent drain on the organization's resources – constitutes far more than simply a setback to the organization's abstract social interest, *see Sierra Club v. Morton*, 405 U.S., at 739.

Id.

In reaching this conclusion, the Supreme Court noted that although HOME would have to demonstrate at trial that it indeed was impaired in its ability to promote fair housing, it was error for the district court to dismiss HOME's complaint because its allegations were sufficient to establish the constitutional *minima* of injury in fact necessary to satisfy Article III requirements. *Id.*

FHOM has alleged such injury in this case. According to the complaint, one of FHOM's activities in combating illegal housing discrimination is to provide "outreach and education to the community regarding fair housing." Complaint, ¶ 5. FHOM alleges that, as a result of defendant's discriminatory practices, it has "suffered injury to its ability to carry out its purposes . . . [and] economic losses in staff pay, in funds expended in support of volunteer services, and in the inability to undertake other efforts to end unlawful housing practices." *Id.* Thus, fairly construed, FHOM complains that defendant's discrimination against African Americans has caused it to suffer injury to its ability to provide outreach and education (*i.e.*, counseling). As in *Havens*, if defendant's discriminatory housing practices have "perceptibly impaired" FHOM's efforts to provide counseling, there can be no question that it has suffered the requisite injury in fact to confer standing under the Fair Housing Act. *Havens*, 455 U.S. at 379.

Defendant, relying primarily on two unreported decisions from the Eastern District of Pennsylvania, has directed the court to a line of authority from other circuits which has limited the *Havens* decision to its facts and held that the diversion of an organization's resources to legal efforts is insufficient to confer standing under the Fair Housing Act. This authority suggests that *Havens* does not stand for the proposition that an injury which is purely self-referential satisfies Article III standing. For instance, in *Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corporation*, 28 F.3d 1268 (D.C. Cir. 1994), the D.C. Circuit, after finding that the plaintiff had standing because it had alleged facts which sufficiently mirrored *Havens*, stated, in *dicta*, that it rejected the conclusion that standing exists if an agency has deflected time and money from counseling to legal efforts at combating discrimination. *Id.* at 1277. According to the D.C. Circuit:

> By this logic, the time and money that plaintiffs spend in bringing suit against a defendant would itself constitute a sufficient "injury in fact", a circular position that would effectively abolish the requirement altogether. **Indeed, an organization devoted exclusively to advancing more rigorous enforcement of selected laws could secure standing simply by showing that one alleged illegality had "deflected" it from pursuit of another contrary to such decisions as *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974). *Havens* did not so hold.** The Court there did not base standing on the diversion of resources from one program to another, but rather on the alleged injury that the defendants' actions themselves had inflicted

> upon the organization's programs. To be sure, the Court did mention the "drain on the organization's resources". Yet this drain apparently sprang from the organization's need to "counteract" the defendants' assertedly illegal practices, and thus was simply another manifestation of the injury that those practices had inflicted upon "the organization's noneconomic interest in encouraging open housing", an interest that is quite intelligible apart from the allied efforts at increasing legal pressure on civil-rights violators (Citations omitted).

Id. at 1277 (emphasis added).

Notwithstanding this language, the Supreme Court's decision in *Havens* remains controlling and this Court declines defendant's invitation to depart from precedent.[2] Since FHOM has alleged that the discriminatory practices of the defendant have injured its ability to carry out its purpose, and since one of FHOM's functions is to provide outreach and education to the community regarding housing discrimination, the court finds that FHOM has alleged a sufficient injury in fact to satisfy Article III standing requirements. *Havens*, 455 U.S. at 379.

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[2] The Ninth Circuit has not addressed the issue of a fair housing organization's standing to sue under the Fair Housing Act.

B. Standing under the Civil Rights Act of 1866

Unlike the Fair Housing Act of 1968, the issue of standing to sue under the Civil Rights Act of 1866[3] requires examination of both constitutional and prudential considerations. *Warth*, 422 U.S. at 499-501. However, since the Court has already concluded that FHOM has satisfied the standing requirements of Article III, the only issue remaining to be determined is whether FHOM is barred from asserting its civil rights claim by the prudential standing rules discussed earlier in this Order. *See* Discussion, at 4-5.

Although the Ninth Circuit has not addressed this precise issue, other circuit courts have permitted fair housing organizations such as FHOM to assert claims on its own behalf under the Civil Rights Act of 1866. *See, e.g., Cabrera v. Jakabovitz*, 24 F.3d 372, 379 (2d Cir.), *cert. denied*, 513 U.S. 876 (1994); *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1089, 1095 (7th Cir. 1992), *cert. denied*, 508 U.S. 972 (1993). Moreover, the prudential limitations which generally require that a plaintiff assert his own rights and not those of third parties to the suit, are inapplicable here because FHOM has asserted an injury to itself resulting from defendant's alleged discriminatory practices. Thus, FHOM has standing to assert its claims under the Civil Rights Act of 1866.

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[3] Notably, section 1982 of the Civil Rights Act of 1866 does not specifically state who may sue to enforce the rights it establishes. 42 U.S.C. § 1982.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss for lack of subject matter jurisdiction is DENIED. FHOM has standing to assert its claims under the Fair Housing Act of 1968 and the Civil Rights Act of 1866.

IT IS SO ORDERED.

Dated: March 10, 1998

/s/ Martin J. Jenkins
MARTIN J. JENKINS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAIR HOUSING OF MARIN, a California non-profit corporation,

Plaintiff,

v.

JACK COMBS, individually and doing business as WATERS EDGE APARTMENTS,

Defendants.

_____/

No. C 97-1247 MJJ

ORDER ENTERING DEFAULT JUDGMENT AND AWARDING COMPENSATORY AND PUNITIVE DAMAGES TO PLAINTIFFS

(Filed Mar. 29, 2000)

INTRODUCTION

Before the Court is a motion for default judgment by plaintiff Fair Housing of Marin ("FHOM"), enabled by the Court's striking of defendants' answer by the Court's March 2, 1999 Order. Having considered the briefs, declarations and arguments of counsel, the Court hereby enters default judgment against defendants Jack Combs individually and doing business as Waters Edge Apartments (collectively "defendants"), and assesses compensatory damages in the amount of $24,377.00 and punitive damages in the amount of $74,400.00.

FACTUAL BACKGROUND

Plaintiff Fair Housing of Marin is a non-profit community organization located in San Rafael, California. FHOM maintains several programs in furtherance of its stated mission of ensuring equal housing opportunity and

educating the community on the value of diversity. Its major outreach programs include educational programs for schools and groups on diversity and stereotyping, housing discrimination research, affordable housing advocacy, and fair housing counseling.

In February 1994, FHOM received a discrimination complaint from Fatima Muhammed, an African-American tenant at the Waters Edge Apartments, which was then owned and managed by Combs. Combs had served Muhammad with multiple written demands to leave Waters Edge, for reasons she believed to be solely racial. In September of that year, FHOM received a second complaint about Combs from a Caucasian tenant of Waters Edge, Scott Wilmore.

In response to these complaints, FHOM conducted two "paired tests" whereby two FHOM employees, one Caucasian, the other African-American, were sent to Waters Edge posing as prospective tenants. The first paired test was conducted in October 1994, the second in May 1995. FHOM has presented the testers' reports of those inspections as evidence of differential treatment based on race. In the first test, Combs told the Caucasian tester that Waters Edge was an all-white building, that Combs no longer rented to blacks, and that the tester would "fit in quite nicely." Fishback Decl., ¶ 20-21. Combs treated the African-American tester politely, but she was not similarly encouraged to apply. Radden Decl., ¶ 8.

In the second test, Combs again treated the African-American tester politely but did not encourage her application. Russell Decl., ¶ 8-10. The same day, Combs showed the Caucasian tester the same apartment and told her that if she took possession of the apartment immediately,

Combs would clean the apartment, do repairs and allow her to live rent-free for the remainder of the month. Zeldin Decl., Exh. E at P000065 (tester report form of Perry Grey).

On December 1995, FHOM received three more discrimination complaints from Waters Edge tenants, including one African-American tenant (Cindy Mitchell) who eventually left Waters Edge after being served with at least two eviction notices. After Mitchell left in January 1996, no African-Americans remained in the 18-unit complex, and none became tenants for the remainder of Combs' ownership of Waters Edge, a period of over three years.

In addition to the comments made to Fishback during his test, Combs also represented to several Caucasian tenants that he wished Waters Edge to be an all-white building. Nicholson Decl., ¶ 8 ("I want an all-white building"); Sangster Decl., ¶ 4 ("I'm proud to have a all-white building"); Tramblie Decl., ¶ 9 (Combs stated wish to own an all-white building).

Combs also told several tenants that he did not wish to rent to African-Americans. Urmy Decl., ¶ 7 ("I don't want any niggers in my building. I own it. I'll have who I want"); Tramblie Decl., ¶ 6 ("I'll sell the place before I rent to a nigger"); Sangster Decl ., ¶ 4 ("No niggers are allowed on the premises"); Low Decl., ¶ 5 (Combs related that he could refuse to rent to "pickaninnies" under the pretext that their credit is not good enough).

This action was filed in 1997. Over the course of discovery, Combs repeatedly ran afoul of the Court's discovery orders and of the Federal Rules of Civil Procedure governing discovery. On October 5, 1998, the Court

adopted in part Magistrate Judge Hamilton's Report and Recommendation recommending sanctions against defendant, awarding monetary sanctions for discovery abuses. The Court did not at that time adopt the recommendation that terminating sanctions be ordered, but warned Combs that "any subsequent failure to comply with discovery orders may result in sanctions."

On March 2, 1999, the Court ordered terminating sanctions against Combs pursuant to F.R.C.P.P. 37(b)(2)(C) in response to defendant's repeated and egregious abuses of civil discovery, and Combs' failure to heed the clear warning provided over a half-year earlier. In doing so, the Court followed the legal test for imposing such a severe sanction. After weighing all five factors outlined in *Malone v. U.S.P.S.*, 833 F.2d 128, 130 (9th Cir. 1987), the Court struck Combs' answer as a sanction, and ordered entry of a default against Combs. Default was entered against Combs on March 4, 1999, and the instant motion for default judgment followed.

LEGAL ANALYSIS

I. Liability

In entering default judgment, the Court must first undertake an inquiry as to what violations, if any, arise from the well-pled allegations of the complaint. The Court need not make detailed findings of fact in the event of a default judgment. *Adriana Int'l. v. Thoeren*, 913 F.2d 1406, 1414 (9th Cir. 1990). The general rule is that, upon entry

of a default, well-pled allegations in the complaint regarding liability are deemed true. *Geddes v. United Financial Corp.,* 559 F.2d 557, 560 (9th Cir. 1977).[1]

Combs does not dispute the general principles of law outlined above, but counsels the Court that unreasonable inferences should not be drawn from the complaint. Combs also generally bemoans what he characterizes as the circumstantial nature of FHOM's allegations regarding discrimination. The Court would only point out in response that while direct evidence of racial animus is relatively rare, it is amply present on this record. Moreover, this animus unfortunately maps directly onto the pattern of increasingly exclusive Caucasian occupancy at the Waters Edge apartment complex during Combs' ownership. Combs argues that the record lacks the type of information enabling traditional methods of circumstantial proof of discrimination, *e.g.* by proof of disparate impact. As the Supreme Court has found, this point is inapposite where, as here, there is direct evidence of racial discrimination. *Trans World Airlines v. Thurston,* 469 U.S. 111, 121 (1985).

Therefore, the Court's review of the complaint indicates that imposition of liability is proper on all counts. FHOM has pleaded facts which, when accepted as true establish a violation of (1) sections 3604(a), 3604(c) and 3617 of the California Fair Housing Act; (2) 42 U.S.C.1982; (3) the California Fair Employment and Housing Act; and (4) section 17203 of the California Business and Profes-

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[1] The Court must make particularized findings as to damages. *Adriana,* 913 F.2d at 1414. It does so, *infra.*

sions Code. The Court therefore turns to FHOM's requests for compensatory and punitive damages, and for injunctive relief.

II. Damages

A. Compensatory Damages

1. Diversion of Resources

FHOM claims that the complaints it received regarding Combs caused it to divert time and resources from its planned education and counseling programs to embark on a prolonged investigation of the extent and nature of discrimination in Combs' housing practices. Damages are cognizable for harm caused by the diversion of resources away from these core FHOM programs to investigate the allegations against Combs. *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 n.19 (1982). The Seventh Circuit has characterized diversion of resources damages as equivalent to the "opportunity costs" of pursuing the investigation of Combs' practices. *U.S. v. Balistrieri,* 981 F.2d 916, 933 (7th Cir. 1992).

FHOM claims a total of $16,317 in diversion of resources damages, which it quantifies in four broad categories: (1) the cost of FHOM worker time in investigating and litigating the Waters' Edge complaints ($12,179); (2) the expenses incurred by FHOM employees in testing ($237); (3) tester recruitment and training costs ($661); and (4) costs associated with the formation of and participation in the Marin County Board of Supervisors' Task Force on Housing Discrimination, and the Marin Roundtable on Hate Violence ($3,240). Defendant disputes the hourly rates utilized to calculate the costs of FHOM

employees' time, and with defendant's financial responsibility for the Task Force and Roundtable expenses.

On the question of hourly rates, FHOM presents rates that it claims are reflective of the value of services in the marketplace.[2] Combs counters that there is no basis for the hourly rates, as there is no evidence that FHOM has ever charged any party these rates. Alternatively, Combs urges the Court to calculate damages based on a *pro rata* basis.

The Court has reviewed the submissions and finds as follows. First, FHOM's proposed hourly rates are reasonable, and even modest for this market. Moreover, it is completely reasonable to charge an hourly rate that does not match the *pro rata* salary of the individual; to find otherwise would place into question the fees and costs associated with a litany of professionals (including attorneys) whose hourly rate and salary prorated to the hour bear only passing resemblance to one another. On this record, the remarkable fact in this case is that the *pro rata* and billing rates are so close. Moreover, the concept of opportunity cost to FHOM, which is recognized as the equivalent measure of diversion of resources damages, applies equally where resources are diverted to assist in litigation. For those reasons, the Court finds the "case costs" request of $12,179 to be recoverable in full as

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[2] The hourly rates claimed are as follows: $75 for Nancy Kenyon (Executive Director); $70 for Caroline Peattie and Jane Shandler (Senior Fair Housing Specialists); $45 for Alex Diefenbach (Associate Director); and $15 for Jeff Fishback, Perry Grey, Maketa Groves, Sean Sullivan, Ana Hilda Mosh, Eugenia Amador, and Rob Hodil (Fair Housing Counselors). Kenyon Decl., Exh. T.

diversion of resources damages. The Court also finds that the $898 requested in testing costs and tester training is equally appropriate and reasonable as a measure of diversion of resources damages. Finally, FHOM requests a total of $3,240 for the formation of and participation on committees and task forces, namely (1) the Marin County Board of Supervisors' Task Force on Housing Discrimination ($1,140) and (2) the Marin Roundtable on Hate Violence ($2,100). On this record, however, FHOM has failed to establish a sufficient nexus between Combs' admittedly reprehensible conduct and the equally reprehensible phenomenon of hate violence. FHOM's hate violence outreach program may be another salutary purpose of FHOM's mission, but it is not a result of Combs' conduct. Therefore, the Court will not assess damages for diversion of resources pertaining to the Roundtable, as Combs has not been shown to be, and as a matter of logic is not, the "but for" cause of these expenses. The Court accordingly awards FHOM a total of $14,217 in compensatory damages for diversion of resources.

2. Frustration of Mission

FHOM also claims that Combs' activities did harm to their organizational mission to "ensure equal housing opportunity and to educate the community on the value of diversity in our neighborhoods." FHOM argues that the true ripple effects of Combs' discrimination can only be known and cured by significant outreach. A fair housing organization may suffer redressable injury to its "non-economic interest in encouraging open housing", or frustration of mission. *Havens,* 455 U.S. at 368, n.20. To recover, a fair housing organization must establish that expenditures in education, counseling and/or outreach are

necessary to counterbalance the effects of a defendant's discriminatory practices. *See, e.g., Spann v. Colonial Village, Inc.*, 899 F.2d 24, 28-29 (D.C. Cir. 1990).

FHOM claims a total of $34,500 in frustration of mission damages. These break down as follows: (1) further testing and monitoring of Combs' activities for compliance with fair housing standards over the next three years ($8,100); and (2) advertising and outreach designed to remediate any effects Combs' acts may have had on the community, enabled by the creation of an outreach position at FHOM ($26,400). Accepting Combs' representations that he has exited the rental property management business, FHOM revised the testing and monitoring figures to $500, making the adjusted frustration of mission total $26,900.

The Court has reviewed the data supporting FHOM's claims for frustration of mission and reaches the following conclusions. First, FHOM cannot establish on this record any need for expenditures on training, supervising or monitoring Combs, as he has now exited the rental management market. The Court's refusal to grant compensatory damages to that end is, however, contingent upon Combs remaining out of the market, and the Court will order *infra* that Combs keep FHOM apprised of any change in his inactive status within the next five years, thus making monitoring a costless endeavor for FHOM. Second, Combs' past bad acts do not warrant the ongoing partial charge of a part-time outreach position to his account. The Court finds that the costs envisioned for the design, printing and dissemination of literature aimed at redressing the impact Combs' discrimination had on the Marin housing market is adequate to redress FHOM for the harm to its mission. Therefore, the Court finds that a

total of $10,160 in frustration of mission damages are appropriate.

B. Punitive Damages

Punitive damages are appropriately assessed where defendant has been demonstrated to act with reckless disregard as to the rights of prospective and actual tenants. *Smith v. Wade,* 461 U.S. 30, 56 (1983). Punitive damages "serve the purpose 'of punishing the defendant, of teaching him not to do it again, and deterring others from following his example.'" *Id.* FHOM requests $200,000 – which it calculates to be one full year of gross revenues from the Waters Edge property. As support for such a sizeable award, FHOM cites to *Adriana, supra* ($2.5 million in punitive damages awarded in addition to $6 million in compensatory damages); *Action SA v. Marc Rich,* 951 F.2d 504, 508-9 ($500,000 in punitive damages, $1.7 million in compensatory damages); *Fountilla v. Carter,* 571 F.2d 487, 492 (9th Cir. 1978); *City of Chicago v. Matchmaker Real Estate Sales Center,* 982 F.2d 1086, 1099-1100 (7th Cir. 1992). FHOM also cites to several unreported district and state court cases where substantial punitive damages awards were made for race-based rental discrimination. *See, e.g., Broome v. Biondi,* No. 96 CIV 0805 (S.D.N.Y. Nov. 4, 1997) (punitive damages award of $467,000 not excessive for co-op's refusal to rent to African-American tenant). Combs contends that no punitive damages are appropriate, given failure of proof. Combs has also elected not to introduce evidence of his net worth, as is his prerogative. *Tri-Tron,* 525 F.2d 432, 438 (9th Cir. 1975). Nonetheless, Combs has submitted his tax records which ostensibly demonstrate that neither Waters Edge nor any of his other rental properties generated net

revenues in the calendar years 1993 through 1997 inclusive. Combs Decl., ¶ 8, Exh. A.

The Court looks to the full record before it for guidance on the most judicious application of its discretionary power. On the one hand, the record on liability is damning, and Combs' conduct is punishable on its own merits and in the greater interest of eradicating housing discrimination. On the other, the Court must be careful to punish Combs for his own conduct, and not make him a vehicle for redressing similar injuries he did not cause.

The Court finds the most reasonable means of squaring those two competing concerns is to focus on the behavior Combs is alleged to, and now is deemed to, have undertaken. Combs has represented to others that he wished to operate an all-white building. The departures of two specific African-American tenants, Fatima Muhammed and Cindy Mitchell, both of whom complained of unfair treatment to FHOM, allowed Combs to own and operate Waters Edge devoid of African-American tenants. Both left Waters Edge only after a series of verbal and formal demands from Combs to leave, for reasons that on this record can only be deemed pretextual. In other words, the dividend from Combs' plan to "whiten" Waters Edge is an ascertainable sum, in the form of rental revenues subsequently generated by Muhammad and Mitchell's units. The Court finds that those rental revenues generated from Muhammad and Mitchell's units post-departure provide a reasonable benchmark for punitive damages.

Accordingly, Combs is ordered to pay $74,400.00 in punitive damages.[3]

While the above sum is roughly three times that awarded FHOM in compensatory damages, it is less than FHOM requested ($200,000, or roughly one years' gross rental revenues from Waters Edge). The Court finds that the award bears a suitably close relationship to the actual discriminatory acts fueling this lawsuit (*i.e.* the wrongful exclusion of African-American tenants from Waters Edge), while staying within established constitutional norms when compared to the compensatory damages award. *See Pacific Mutual Life v. Haslip,* 499 U.S. 1, 23-24 (1991) (punitive damages award four times as large as compensatory award "does not cross the line into the area of constitutional impropriety").

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[3] The Court relies on stipulated facts in the record to reach its punitive damages figure. Muhammed occupied unit 4 in Waters Edge and vacated in February 1994. She was replaced by a Caucasian tenant, and Combs received a total of 57 months worth of rental revenue from the unit before selling the property in April 1999. Mitchell occupied unit 6, and vacated in January 1996. She was replaced by a Caucasian tenant, and Combs collected a total of 36 months' rental revenue from that unit before he sold Waters Edge. The record reflects that Combs offered vacant apartments in that time period for 800-825 dollars a month. Taking the lower of those two figures, the Court multiplies the estimated rent for units 4 and 6 ($800) by the number of months Combs generated "all-white" revenue from those units (collectively 93).

The Court is aware that other African-American tenants had previously been tenants at Waters Edge. However, the circumstances of their departures are not part of this record. In any event the Court believes the punitive damages sum derived from the above calculation is sufficient and reasonable under the circumstances.

C. Injunctive Relief

In April 1999, Combs sold the waters Edge complex and has renounced any intent of ever again participating in residential real estate management. Combs now lives in Pacifica, where he currently rents a room out to a tenant. Combs argues that the prayer for injunctive relief is mooted by his withdrawal from the market. FHOM argues that there is no guarantee that Combs' withdrawal is permanent, and that injunctive relief is still appropriate. In the alternative, FHOM seeks a declaratory judgment that Combs has violated fair housing laws. The Court finds that injunctive relief is no longer proper on this record, but orders Combs to inform FHOM annually in writing of any of his ownership and/or management of any rental property. This order shall remain in effect for five (5) years from the date of this order, and any change in Combs' status may warrant reconsideration of the Court's denial of monitoring and counseling costs to FHOM as a measure of frustration of mission damages.

CONCLUSION

For the reasons provided herein, the Court hereby enters default judgment in favor of FHOM, finding defendants liable for violations of the Fair Housing Act, 42 U.S.C.1982, the California Fair Employment and Housing Act, and the California Business and Professions Code. Defendants are hereby ordered to pay compensatory

damages in the amount of $24,377.00 and punitive damages in the amount of $74,400.00.

IT IS SO ORDERED.

Dated: 3/29/2000

/s/ Martin J. Jenkins
MARTIN J. JENKINS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAIR HOUSING OF MARIN, a California non-profit corporation,

Plaintiff,

v.

JACK COMBS, individually and doing business as WATERS EDGE APARTMENTS,

Defendants. /

No. C 97-1247 MJJ

JUDGMENT

(Filed Mar. 29, 2000)

On March 29, 2000, the Court granted plaintiff Fair Housing of Marin's application for default judgment in this action. Therefore, IT IS HEREBY ORDERED that judgment be entered against defendants for violations of 42 U.S.C. § 1982, sections 3604(a), 3604(c) and 3617 of the California Fair Housing Act, the California Fair Employment and Housing Act (FEHA), and section 17203 of the California Business and Professions Code.

Defendants are hereby ordered to pay compensatory damages in the amount of $24,377.00, and punitive damages in the amount of $74,400.00. Defendants are further ordered to provide plaintiff within thirty (30) days of the date of this order a written listing of any and all real estate that plaintiff owns, operates, and/or manages in this judicial district. Updated listings shall be provided annually, for five (5) years from the date of the initial listing. The Court will retain jurisdiction over this matter to ensure compliance with defendants' disclosure obliga-

tions under this order. The Clerk of the Court shall close the file.

IT IS SO ORDERED.

Dated: 3/29/00

/s/ Martin J. Jenkins
MARTIN J. JENKINS
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FAIR HOUSING OF MARIN, a California non-profit corporation, Plaintiff-Appellee, v. JACK COMBS, individually, dba Waters Edge Apartments, Defendant-Appellant.	Nos. 00-15925 and 00-17040 D.C. No. CV-97-01247-MJJ ORDER (Filed Jun. 04, 2002)

Before: RONEY,* HUG, and THOMAS, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judge Thomas voted to deny the request for rehearing en banc and Judges Roney and Hug have so recommended.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and request for rehearing en banc are denied.

* Honorable Paul H. Roney, Senior United States Circuit Judge for the Eleventh Circuit, sitting by designation.

JUDGMENT

COSTS TAXED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 00-15925
CT/AG#: CV-97-01247-MJJ

FAIR HOUSING OF MARIN,
a California non-profit corporation

Plaintiff-Appellee

v.

JACK COMBS, individually,
dba Waters Edge Apartments

Defendant-Appellant

NO. 00-17040
CT/AG#: CV-97-01247-MJJ

FAIR HOUSING OF MARIN,
a California non-profit corporation

Plaintiff-Appellee

v.

JACK COMBS, individually,
dba Waters Edge Apartments

Defendant-Appellant

(Filed Jun. 17, 2002)

APPEAL FROM the United States District Court for the Northern District of California (San Francisco)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California (San Francisco)

and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered April 9, 2002

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUN 12 2002
by: [Illegible]
Deputy Clerk